IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.6403/07
Sita Devi & Anr. Vs. State of Raj. & Ors.

30.08.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Bharat Yadav for petitioner.
Shri B.K. Sharma, Dy. GA for respondent.

Petitioner no.1 who is Sarpanch of Gram Panchayat Ranoli, Tehsil Peeplu, Disttt. Tonk and petitioner no.2 who is her husband and Ward Panch of Ward No.7 of the same Panchayat Samiti gave birth to third child on 9.9.1997 and therefore in view of provisions of Section 19(l) of the Rajasthan Panchayati Raj Act have become disqualified to hold the office of Sarpanch and Ward Panch respectively. Preliminary enquiry was held against them initially by BDO, Tonk and thereafter the Chief Executive Officer, Zila Parishad, Tonk. The petitioners submitted representation to the

respondents to drop the enquiry but that has not been accepted. Learned counsel for the petitioners relied on the judgment of Full Bench of this Court in Smt. Sameera Bano Vs. State of Raj. & Ors, D.B. Special Appeal (W) No.236/06, decided on 2.4.2007 in support of his contention and argued that the petitioners cannot be removed from their respective offices on account of the disqualification which pertained to the period prior to the date of their election.

The respondents have contested this writ petition and argued that writ petition is a premature as presently there is no cause of action for filing the writ petition and no adverse order has so far been passed against the petitioners and mere pendency of enquiry does not give rise to any cause of action. It has been argued that since the petitioners do not deny the

fact that the fourth child born by their marriage they become ineligible to continue in the respective offices by virtue of the bar contained in Section 19(l) of the Act and, therefore, were liable to be declared disqualified to hold their office as per Section 39 of the Rajasthan Panchayati Raj Act. It was argued that the respondents are competent to decide the question of disqualification and therefore they can also held the enquiry.

Controversy raised in this case is squarely covered by the decision of Larger Bench in the case of Smt. Sameera Bano Vs. State of Raj. & Ors, D.B. Special Appeal (W) No.236/06, decided on 2.4.2007 wherein it was held as under:-

> "that a pre-election disqualification can be adjudicated only in an election petition before the District Judge under Section 43 of the Act read with rule 80 of the Election Rules and cannot be

adjudicated by the authority under rule 23 of the Rules."

Following the view taken by the larger bench in Smt. Sameera Bano, supra, the writ petition deserves to be allowed and is accordingly allowed. The enquiry proceedings against the petitioners for declaring them disqualified to continue in the office of Sarpanch and Ward Panch are held to be illegal.

(Mohammad Rafiq),J.

Rs/-